

UNITED STATES DISTRICT COURT

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WESTERN DISTRICT OF LOUISIANA
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WESTERN DISTRICT OF LOUISIANA

LAFAYETTE DIVISION

Manuel David Hernandez

(petitioner/movant) (pro-se) ***

versus

crim. No. 97-CR-60039-01

United States of America

* 28 USC § 2255 Amendment

(respondent)

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... "Motion To 'Amend & Supplement' Movant's

28 U.S.C. § 2255 Motion; Under Fed.R.Civl Procedure

Rule(s) 15(a), (d); 'Seeking-Relief' Under Both

The Recent U.S. Supreme Court Rulings Of

'REHAIF' And 'DAVIS' (Jyne, 2019)

That Are Deemed Retroactive On Collateral Review

Hereby 'Amending' Document # [189] Respectfully...

COMES NOW, petitioner/movant hereby tendering this motion to 'Amend' & 'Supplement' the pending 28 U.S.C. § 2255 with 'two-separate'; but highly relevant U.S. Supreme Court

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decisions that are 'presently' retroactive on collateral review.

The decision of 'REHAIF' (June, 2019); has clearly ruled in morvant's favor and clearly manifest's his 'Actual-Innocence' of the 18 U.S.C. § 922(g)(1) count(s) 3, 6, 9, 'Felon In Possession Of A Firearm' crimes...

As it presently stands, this Morvant, is clearly deemed 'Actually-Innocent' and is hereby entitled to a 'Free-Standing Remedy' and entitlement to Relief...

'REHAIF' (citations-omitted), ruled that in order for the gov't to have proven morvant's guilt in 1998, the gov't must prove, thus:...

... (1) that morvant knew before he possessed the firearm that he knew he belonged to the 'category' of persons under 18 U.S.C. § 922(g)(1);

and (2) that morvant knew that he was prohibited by federal law from possessing a firearm after having been convicted of a state felony..

Morvant, was indicted On or About October 22nd, 1997,

during that relevant time period morvant never knew he belonged to the 'category' of persons listed in § 922(g)(1); and furthermore never 'knew' that federal law at that time

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prohibited movant from either 'Constructively/Actually'
possessing a firearm after having been convicted
of 'three- concurrent' state of Illinois felonies? . . .

- - - Based upon 'REHAIF' which is clearly
retroactive on collateral-review, movant assert's
his claim(s) that he is now 'Actually-Innocent'
of counts (3), (6), (9), convictions and sentences
under the statute 18 U.S.C. § 922(g)(1). . .

This violates his 'fundamental-substantive'
5th, 6th, and 13th federal-constitutional rights
and this 'statutory-substantive' U.S. Supreme Court
ruling is quite clear and relevant to movant's freedom.

WHEREFORE, Justice Militate's That The Integrity
of This federal Court Be Applied To further Promote
the Public's Trust And Manifest's Fairness to
this movant's Life, Liberty, and Due Process Of Law.

Movant, respectfully moves this Honorable Court of Review
To Immediately Vacate Counts (3), (6), (9)
Without Unnecessary Delay or Hesitation.
MAY IT PLEASE This Honorable Court of Review...

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Additionally, the 5th Circuit & U.S. Supreme Court decision of Maurice Lamont Davis - 'DAVIS' (June, 2019) (citations omitted)

has ruled clearly that 18 U.S.C. § 924(c)(3)(B) is now deemed

'Unconstitutionally-Vague' in direct contravention of the 5th Amendment

prohibition against "Vague-Laws" under the "Vagueness-Doctrine". . .

Movant asserts he is "Actually-Innocent" of the 18 U.S.C. § 924(c)(1)(A)(i)

convictions & sentences; contained in counts (2), (5), (8) . . .

Movant's companion crimes or (predicate) crimes that 'triggered' these punishments are counts (1), (4), (7), that charged both 18 U.S.C. § 2113(a) & (d) and

18 U.S.C. § 2 'Aiding & Abetting'. . . The 'DAVIS' Majority-Ruling,

has ruled that . . . "A Vague Law Is No Law At All". . .

There remains only one-other possible way that movant's § 924(c)(1)(A)

convictions & sentences could have been 'triggered' is 'Via' 18 U.S.C. § 924(c)(3)(B)
Residual-Clause.

that is highly unconstitutional, and contravenes movant's 5th amendment

protection against being punished & convicted under a 'Vague-Law' that is presently

prohibited under the Vagueness-Doctrine. Examining the Companion crime statute

of 18 U.S.C. § 2113(g) and 18 U.S.C. § 2 do-not fall under 18 U.S.C. § 924(c)(3)(A).

Since the 'categorical' approach announced under 'Shepard (2005)'; 'Taylor';

and 'Descamps', 'Johnson II', would dictate that, judge Haik would have had

examine - completely on the record the 'statutory-elements' of both 18 U.S.C. § 2113(a) and 18 U.S.C. § 2; which after conducting this searching-examination of the entire scope of the main statutory-text one would then clearly and brightly see that 18 U.S.C. § 2113(a) does contain both 'Non-violent' and 'violent' elements or way's that § 2113(a) can be violated and judge Haik nor the govt can elect those harsher-elements.

(Clearly § 2113(a) is an 'Indivisible' statute, and the 'modified categorical approach' has no place to overrule the 'categorical' approach. The govt nor court are never at liberty to pick and choose the harsher methods or elements that would constitute a crime of violence, that would then 'trigger' the convictions & sentences under § 924(c)(1)(A) nor § 924(c)(3)(A).

Of course 18 U.S.C. § 2113(d) is of no qualification or discussion since it is only an "aggravating-sentencing element" and not a stand-alone crime itself, since § 2113(a) describes in the main-text the actual elements or crime of a federal bank robbery crime.

Now, examining 18 U.S.C. § 2, aiding & abetting, that was also charged in relation to the companion crime charged in Counts (1), (4), (7), in 'relatio' to the 18 U.S.C. § 2113(a) crime and 'jury-instructions' would not qualify movant to be punished under 18 U.S.C. § 924(c)(1)(A); nor § 924(c)(3)(A).

Hence, those elements described in 18 U.S.C. § 2 have no force-elements.

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Once again, and repeated, the only possible-way that movant could have been convicted and sentenced under 18 U.S.C § 924(c)(1)(A), or § 924(C) 'second or subsequent' --- would have been under the 'Residual-clause' of § 924(c)(3)(B), that 'DAVIS' has ruled is A Vague Law, that today is no law at all, plus contravenes the 5th Amendment

Vagueness-Doctrine...

PRAYER FOR RELIEF

Movant, assert's that he is 'ACTUALLY-INNOCENT' of the convictions and sentences contained in counts (2), (5), (8) and would hereby respectfully move this honorable-court to Vacate with prejudice counts (2), (5), (8)

And ORDER His Immediate-Release from federal-prison, without 'Supervision' under 18 USC § 3624(e), since he has Served and exceeded far beyond the permissible statutory and guideline sentence he would have received.

under 18 U.S.C. § 2113(g)'(d)', 18 U.S.C. § 2.

MAY IT PLEASE THIS HONORABLE COURT of Review

TO GRANT him 'Relief' Under Both 'REHAF' & 'DAVIS'

(2019), As these U.S. Supreme Court Rulings Are Now Retrautive On Collateral Review, since counts, (2), (3), (5), (6), (8), (9), Are No Longer Valid Convictions.

(s)/Manuel Herney / 22-2020

CERTIFICATE
of
SERVICE

I, Mx. Manuel David Hernandez #09766-035
have filed One Original Hand-Written with the Clerk of Court,
Motion To Amend/Supplement My 28 USC § 2255 Motion
Seeking Relief Under Both "REHAIF" & "DAVIS"
And move the Honorable Chief Judge Maurice Hicks
to Grant this Under fed.R.Civ.P. Procedure. Rule 15(a) & (d).

On this 22nd day of January 2020

28 USC § 1746

Under the penalty of perjury I swear
that this motion is made true and correct.

(s) Manuel Hernandez

I, hereby request from the Clerk of Court A copy of this motion
and Document # (189)? (Please)